

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:01-00254-03

DERWIN COLES

MEMORANDUM OPINION AND JUDGMENT ORDER

Pending before the Court is a motion filed by the defendant pro se on November 16, 2011, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Expedited consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, and addendum to the PSI from the Probation Office and received any materials submitted by the parties on this issue. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

By its written and filed response, the United States does not object to the reduction ordered herein.

Based on the foregoing considerations, the Motion is **GRANTED** and the defendant's previously imposed sentence of imprisonment of 151 months is reduced to 121 months, plus 60 months consecutive for 18 U.S.C. § 924(c) violation, with credit for time served to date, based on the court's determination of the guideline range as set forth below.

**COURT DETERMINATION OF GUIDELINE RANGE:**

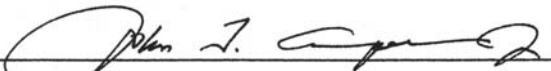
Previous Offense Level:	34	Amended Offense Level:	32
Criminal History Category:	I	Criminal History Category:	I
Previous Guideline Range:	151 to 188 months	Amended Guideline Range:	121 to 151 months

This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C).

Except as provided above, all provisions of the judgment dated January 17, 2003, shall remain in effect.

The Court **DIRECTS** the Clerk to send a copy of this Order to the Defendant, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: April 5, 2012

  
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John T. Copenhaver, Jr.  
United States District Judge